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October 26, 1994

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: MM Docket No. 94-115
RM-8508
Woodville, Mississippi;
Clayton and Jena, Louisiana

Dear Mr. Caton:

Transmitted herewith, on behalf of Radio KPEL-FM, Inc., are an original and four copies of its "Motion to Terminate" with regard to the above-referenced rule making proceeding.

Should any questions arise concerning this matter, please communicate with the undersigned.

Very truly yours,
FLETCHER, HEALD & HILDRETH, P.L.C.



Anne Goodwin Crump
Counsel for Radio KPEL-FM, Inc.

Enclosures

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BEFORE THE

Federal Communications Commission

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WASHINGTON, D.C. 20554

OCT 26 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
Table of Allotments)
FM Broadcast Stations) MM Docket No. 94-115
(Woodville, Mississippi,) RM-8508
Clayton and Jena, Louisiana))
)

Directed to: Acting Chief, Allocations Branch

MOTION TO TERMINATE

Comes now Radio KPEL-FM, Inc., licensee of Station KPEL-FM, Erath, Louisiana, by its attorneys, and respectfully moves that the above-captioned rulemaking proceeding be terminated.¹ In support, the following is stated:

1. On October 4, 1994, the Commission released its Notice of Proposed Rule Making and Order to Show Cause, DA94-1047 (NPRM), establishing the above-captioned proceeding. Station KPEL-FM's predicted service contours would overlap with both the existing allocation and the proposed upgrade. Accordingly, Radio KPEL-FM is a party-in-interest.

2. The NPRM proposes to adopt, inter alia, the proposal of PDB Broadcasting (PDB), which is identified as the permittee of FM Station, Channel 299A, Woodville, Mississippi [WLGG(FM)], and which sought to substitute Channel 299C3 at Woodville in lieu of Channel 299A. The proposal also required that operating station WJNA(FM), Jena, Louisiana, change its frequency to Channel 274A

¹There is being filed simultaneously a Motion for Stay of the procedural dates set forth in the action establishing this proceeding.

as well as that the frequency specified in the application of Gary P. Alvarez and J. Keith Frederick, d/b/a Clayton FM Partnership for a new FM station at Clayton, Louisiana be changed. The fatal flaw with this proposal is that the Commission cancelled PDB's construction permit and deleted the call letters WLGG(FM) on August 12, 1994. (See, Public Notice, Report No. 15878, August 19, 1994.) In point of fact, the PDB permit expired by its own terms on June 13, 1994, over thirty (30) days prior to the filing of PDB's "Petition for Rule Making." By letter dated August 12, 1994, the Commission's reference 1800B-JDB, having not heard from PDB within thirty (30) days, the Commission notified PDB that the CP was cancelled and the call letters deleted as of the expiration date. See Section 73.3599 of the Rules. Public Notice of that action was given on August 19, 1994 as noted above. It was not until September 30, 1994, more than forty (40) days after that public notice and over ninety (90) days after expiration that PDB sought reinstatement.² It is evident that the permit has expired and is beyond reinstatement. Moreover, the required period for seeking reinstatement of PDB's construction permit (see 47 C.F.R. §73.3534) had expired before PDB even filed its "Petition for Rule Making."

3. The cancellation of the WLGG(FM) permit is, of course, not an academic exercise. As an on-channel upgrade, PDB's

²Radio KPEL-FM is filing simultaneously herewith an Objection to PDB's attempt to belatedly seek reinstatement.

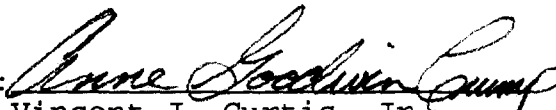
proposal would prohibit other interested parties from filing for this new facility. As a C-3 operation, as opposed to a Class A, the station could well be perceived by others as a potentially valuable property. With the cancellation of the permit, the channel must be made available to anyone who would be interested in filing and substantially changes the proposal as set forth in the NPRM and the notice to the public.

4. Clearly, the Commission must terminate this proceeding. If PDB - or some other party - is interested in seeking an allocation of 299C3 to Woodville - which would be open to any interested parties - then they should file a new Petition for Rule Making reflecting their willingness to apply for such a channel if allocated and subject to a possible cross-filing.

WHEREFORE, the premises considered, it is respectfully requested that the Commission immediately terminate this proceeding.

Respectfully submitted,

RADIO KPEL-FM, INC.

By: 
Vincent J. Curtis, Jr.
Anne Goodwin Crump

Its Attorneys

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October 26, 1994

CERTIFICATE OF SERVICE

I, Mary A. Haller, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that true copies of the foregoing "Motion to Terminate" were sent this 26th day of October, 1994, by first-class United States mail, postage prepaid, to the following:

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Chief, FM Branch
Audio Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 332
Washington, D.C. 20554

*Pamela Blumenthal
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Mary A. Haller